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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1417 OF 2007

National Radio & Electronics Company Limited ... Petitioners

versus

Mahendra Valji Rathod ... Respondent

Mr.N.V.Walawalkar, Sr.Counsel with Mr.S.B.Jijina and Mr.R.M.Pardiwalla i/by Mulla & Mulla & C.B.C. for petitioners.

Mr.S.M.Vyas for respondent.

CORAM : A.S.OKA, J.

DATE : 25th June 2007

PC :

1. Heard learned Senior Counsel appearing for the petitioner. The challenge in this petition under Article 227 of the Constitution of India is to the order dated 30th September 2006 passed by the learned Judge of the Small Causes in a pending suit filed by the respondent. The petitioner is the original defendant. The operative part of the order reads thus :-

> "Notice is partly made absolute.
>
> The Plaintiff is hereby allowed to rely on certified copies of documents viz. Order dated 27.8.1992 passed in RAE Suit No.621/2148 of 1983, notes of evidence recorded in the suit of 1983, letter dated 16.2.1985, property card and Index II, however, by filing additional affidavit of examination in chief.
>
> The Defendant will have right to cross examine the Plaintiff and also will have liberty to file additional examination in chief strictly dealing with the documents which the Plaintiff wants to rely."

2. The effect of the order is that the respondent-plaintiff is allowed to rely upon certain documents and to produce the said documents. The petitioner has been given a right to cross examine the respondent on the basis of the said documents. The petitioner has also been granted a liberty to file additional examination in chief for dealing with the said documents.

3. The order impugned is of interlocutory nature which is capable of being challenged in an appeal which may be preferred by the petitioner against the decree passed in the suit, in the event the said decree is adverse to the petitioner.

4. The learned Senior Counsel for the petitioner submitted that the petitioner will have to amend

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the written statement for dealing with the documents which are permitted to be produced by the Trial Court by the impugned order. It is obvious that it is always open for the petitioner to take out an application for amendment of the written statement and the Trial Court is bound to consider the same in accordance with law.

5. Subject to what is stated above, the writ petition is not entertained and the same is rejected.

6. The learned Senior Counsel for the petitioner has made several submissions on merits of the order. I have not interfered with the impugned order on the ground that the same is purely of an interlocutory nature. Therefore, I have not dealt with the submissions made by the learned Senior Counsel for the petitioner. At this stage the petitioner prays for stay of proceedings of the suit. Prayer is rejected.

(A.S.OKA, J.)